

FEDERAL ROOM

Federal Communications Commission

DA 01-336

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

W/ED

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.

(Jamestown, Alfred, and Canaseraga,)
New York; and Du Bois, Pennsylvania))

MM Docket No. 01-36
RM-10047

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: January 31, 2001

Released: February 9, 2001

Comment Date: April 2, 2001

Reply Comment Date: April 17, 2001

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Vox Allegany, LLC ("petitioner"), licensee of Station WHUG(FM), Channel 270A, Jamestown, New York, proposing the substitution of Channel 270B1 for Channel 270A at Jamestown, and the modification of Station WHUG(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposes (a) the substitution of Channel 246A for Channel 270A at Alfred New York, and the modification of Station WZKZ(FM)'s license accordingly; (b) the substitution of Channel 270A for vacant Channel 246A at Canaseraga, New York; and (c) the modification of the reference coordinates of Station WMOU-FM (formerly WOWQ(FM)), Channel 271B, Du Bois, Pennsylvania. Petitioner states its intention to apply for the channel, if allotted.

2. In support of its proposal, petitioner states that Stations WHUG(FM) and WZKZ(FM) are full Class A FM stations, both operating on Channel 270A. Under the Commission's spacing criteria, Station WHUG(FM) cannot upgrade to a Class B1 facility due to two domestic short-spacings involving Station WZKZ(FM) and Station WMOU-FM, Channel 271B, Du Bois Pennsylvania, which is also licensed to petitioner.

3. We believe petitioner's proposal warrants consideration since the proposed upgrade will substantially increase Station WHUG(FM)'s service area. An engineering analysis has determined that Channel 270B1 can be allotted to Jamestown with respect to all domestic allotments, with a site

restriction of 16.7 kilometers (10.4 miles) northwest at petitioner's requested site.¹ Additionally, Channel 246A can be substituted at Alfred with a site restriction of 7.9 kilometers (4.9 miles) south at Station WZKZ(FM)'s presently authorized site²; Channel 270A can be substituted at Canaseraga with a site restriction of 8.8 kilometers (5.5 miles) east at petitioner's requested site³; and the reference coordinates for Channel 271B at Du Bois can be modified with a site restriction of 20.3 kilometers (12.6 miles) east at petitioner's requested site.⁴ The allotment of Channel 270B1 at Jamestown will result in a short-spacing to Station CFNY-FM, Channel 271C1, Brampton, Ontario. Therefore, since Jamestown, Alfred, Canaseraga, and Du Bois are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested, with the allotment at Jamestown being sought as a specially negotiated, short-spaced allotment.

4. Whenever an existing licensee or permittee is ordered to change frequency to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred. See Circleville, Ohio, 8 FCC 2d 159 (1967). Petitioner has stated its willingness to reimburse the licensee of Station WZKZ(FM) for reasonable costs associated with changing to Channel 246A. Accordingly, we are herein issuing an Order to Show Cause to Pembroke Pines Elmira, Ltd., licensee of Station WZKZ(FM), Alfred, New York, to show why its license should not be modified as proposed.

5. As requested, we also propose to modify the license for Station WHUG(FM) at Jamestown, New York, to specify operation on Channel 270B1. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 270B1 at Jamestown, or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Jamestown, New York	227B, 270A	227B, 270B1

¹ The coordinates for Channel 270B1 at Jamestown are 42-12-40 North Latitude and 79-22-40 West Longitude.

² The coordinates for Channel 246A at Alfred are 42-11-25 North Latitude and 77-49-17 West Longitude.

³ The coordinates for Channel 270A at Canaseraga are 42-26-21 North Latitude and 77-40-29 West Longitude.

⁴ The coordinates for Channel 271B at Du Bois are 42-11-25 North Latitude and 77-49-17 West Longitude.

Alfred, New York	270A	246A
Canaseraga, New York	246A	270A

7. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Pembroke Pines Elmira, Ltd. licensee of Station WZKZ(FM), SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 246A in lieu of Channel 270A.

8. Pursuant to Section 1.87 of the Commission's Rules, Pembroke Pines Elmira, Ltd., may, not later than April 2, 2001, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Tracy Broadcasting Corporation, to furnish additional information. If Pembroke Pine Elmira, Ltd., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Pembroke Pines Elmira, Ltd., will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the following:

Pembroke Pines Elmira, Ltd.
1705 Lake Road
Elmira, New York 14901
(Licensee of Station WZKZ(FM))

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before April 2, 2001, and reply comments on or before April 17, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David G. O'Neil, Esq.
1350 Connecticut Ave., N.W., Suite 900
Washington, D.C. 20036-1701
(Counsel for Petitioner)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making and Order to Show Cause to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making and Order to Show Cause to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making and Order to Show Cause to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of

service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center , at its headquarters, 445 12th Street, S.W., Washington, D.C.